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TRIAL OF WILLIAM FREEMAN.

William Freeman, "an unlearned, ignorant, stupid and degraded negro," as he was called by the officers who conducted the prosecution, was born at Auburn, in the state of New York, in 1824. His father was originally a slave, but became a free man in 1815, by the purchase of his time. Three years after the birth of William he died of *delirium tremens*, or, as others say, from a disease of the brain, caused, as was supposed, by a fall. Of his brothers and sisters two only survive, and one of them has been for years a wandering lunatic. Of those that have died, one, a sister, was for many years immediately preceding her death insane. The mother of William was of mixed Indian and negro descent, and the distinctive Indian features of his grand-parent were strongly marked in her child.

In his early boyhood, he was placed in several families as a servant boy; but was soon discharged from each, as an uncontrollable disposition to play with other colored boys made his services valueless. All attempts at restraint were ineffectual, and his impatience of control and ingenuity in devising means of escape strongly indicated his Indian maternity. From the age of twelve to sixteen he served for brief periods as a waiter in private families and hotels, but was always unsteady, and occasionally intemperate. At times he was taci-

turn and morose but was ever ready to join in the frolic or dance. At the age of sixteen he was falsely accused of stealing a horse, and was committed to await the finding an indictment by the grand jury. While thus confined he broke jail, and was for two weeks at large. He was arrested and indicted for breaking jail and for larceny, and was convicted mainly upon the evidence of a colored man, who, it was afterwards satisfactorily shown, himself committed the theft. He was sentenced to be confined in the state prison at Auburn, at hard labor, for the term of five years. From the beginning Freeman stoutly asserted his innocence, protested against the injustice of his conviction and urged his release. He never became in any manner reconciled to his condition until after a vain resistance to the authorities of the prison, his spirit had been subdued by repeated punishment. Once, when about to be flogged, he assaulted the keeper with a knife, and was struck a heavy blow on the left side of the head with a board, which, to use his own words, "knocked all the hearing off." He was then flogged and set to work. From that time he was a changed man. He was sullen and morose, "and went about with his head down." His hearing was dull before, but heavier afterwards, and though upon the trial the keeper testified "that the blow could not have hurt him," it was found upon a post mortem examination that the tympanum of his left ear had been broken, and that the left temporal bone was carious and diseased.

Freeman served out his full sentence. He was looked upon as hardly above a brute, and treated accordingly. He became exceedingly passionate; would take anything as an insult, and instantly endeavor to avenge it. For this also he was subjected to the severest discipline of the prison. Before his first difficulty with the keeper, he had been permitted to attend the Sunday school, but afterwards, this privilege was denied him. He was looked upon as a dangerous person, as one unsafe to be at large.

During the fall and winter, after the expiration of his sentence, he lived at the house of his brother-in-law. Generally, he was stupid and sluggish, but was sometimes employed in sawing wood or in doing errands. He talked but little, and gave only a confused relation of occurrences in the prison while he was there. The injustice of his sentence and of his first

rencounter with the keeper, were uppermost in his mind, and formed the chief topics of his conversation when he said anything. His controlling idea was, that he had been five years in the state prison, and that he must be paid for it. For this purpose he would inquire for magistrates, and would apply to them for warrants to arrest the people that sent him to prison, that he might thereby secure his pay. Upon the refusal of the magistrate to give him a warrant, he showed much temper; said that he could not do anything with them, and would have to lose it all. He continued in this state, brooding over his supposed wrongs, and his inability to obtain redress, until the enactment of the awful tragedy described below.

Near the village of Auburn, on the 12th day of March, 1846, lived the family of John G. Van Nest. He was a respectable farmer, a man of good education, and of considerable wealth. Just, upright and virtuous, of middle age, and of grave and modest demeanor, he had been distinguished by especial marks of the respect and esteem of his fellow citizens. His family consisted of his wife, his mother-in-law, his daughter, his two sons, the youngest about two years old, and a servant woman. On the night of the 12th of March, a stranger, by the name of Van Arsdale, was within his gates. As the family were retiring to rest, about half-past nine o'clock on the evening of that day, Mrs. Van Nest, who had stepped into the yard in the rear of the house, was mortally wounded by a blow from a knife, and, shrieking, reached the house and died. Hearing the cry of his wife, Mr. Van Nest at once opened the door, when he received a fatal stab from the same hand and fell dead without a struggle. The assassin entered the house, and while passing to the stairs that ascended to the chamber, mortally wounded the mother-in-law, who was attempting to escape. The youngest son was the next victim. He was killed, while sleeping, with a blow from the same knife. Upon attempting to ascend the stairs, the assassin encountered Van Arsdale, who had been aroused by the noise, and severely wounded him; but, after a desperate struggle, he was expelled from the house. He stole a horse, and fled, at full speed, from the scene of his murders. This horse soon giving out, he stabbed it, stole a second one, rode forty miles to the county of Oswego, where he was taken the next day by the officers in pursuit. The murderer was William Freeman.

So fearful a tragedy excited the fiercest indignation against the assassin, and the liveliest sympathy for the victims. When Freeman was brought with chains on every limb to the scene of his murders, and when he looked with a smile upon the desolation which his hand had wrought, his idiotic laugh was taken as evidence of the coolest villany, and the lingering process of the law seemed too slow to the friends of the deceased. The torch, the rack and the gibbet, were in turn suggested by the excited throng, and willing hands were ready to execute the wishes of the infuriated people. By an adroit stratagem, however, the officers circumvented the maddened mob, and secured Freeman within the walls of a jail, who was all the while as indifferent and unmoved as though watching the peaceful flow of some rippling brook. But the popular excitement was not thus allayed. As the tragic story spread from village to village, from every mouth and every press were uttered the bitterest maledictions. A short time previously another murder had been committed; the defence of insanity had been urged, and the trial resulted in the disagreement of the jury. The note of alarm was sounded that the defence of insanity would be set up in behalf of Freeman, and in advance the sharpest denunciations were thrown out against whoever should dare thus to interpose between justice and its victim. The solemn pageantry of the funeral of the Van Nest family heightened all these feelings. Side by side upon a single bier, and beneath the same pall, were placed the members of this household who, almost by a single blow from the same hand, had been removed from around the family altar to the throne of their heavenly Father. A vast concourse of people followed their remains to the house appointed for all the living. The pastor of the church of which the deceased were members, as a part of the funeral ceremonies, preached a discourse, of which the following is the conclusion:

"If ever there was a just rebuke upon the falsely so-called sympathy of the day, here it is. Let any man in his senses look at this horrible sight and then think of the spirit with which it was perpetrated, and unless he loves the murderer more than his murdered victims, he will, he must confess that the law of God which requires that 'he that sheddeth man's blood, by man shall his blood be shed,' is right, is just, is reasonable. Is this the way to prevent murder, by sympathy? It encourages it, it nerves the heart of the assassin. The wretch who committed this horrid deed has been in the school of the state prison for five years, and

yet, comes out a murderer. Besides, it is an undeniable fact, that murder has increased with the increase of this anti-capital-punishment spirit. It awakens a hope in the wretch that by adroit counsel law may be perverted, and jurors bewildered or melted by sympathy; that by judges infected with it, their whole charges may be in favor of the accused; that by the lavishment of money, appeals might be multiplied, and witnesses may die. Why, none of us are safe under such a false sympathy as this; for the murderer is almost certain of being acquitted. If I shoot a man to prevent him from breaking into my house and killing my family — these gentlemen will say I did right. But if he succeeds and murders my whole family, then it would be barbarous to put him to death! Oh! shame, shame. I appeal to this vast assembly to maintain the laws of their country inviolate, and cause the murderer to be punished."

A copy of this discourse was solicited for publication; the request was granted, and it was printed and distributed gratuitously throughout the body of the state.

It was in the midst of this excitement, which had only gathered depth and strength by lapse of time, that, on the 15th of June, 1846, a special court was held at Auburn, and Freeman was arraigned upon the four indictments for murder that had been found against him the previous month by the grand jury. Luman Sherwood, Esq., district-attorney, conducted the prosecution. The Hon. William H. Seward appeared for the prisoner, and put in a plea of insanity, upon which the district-attorney took issue. By a provision of the New York statutes, "No insane person can be tried, sentenced to any punishment, or punished for any crime or offence, while in that state." It therefore became necessary to settle the fact whether the prisoner was insane. The question was raised, whether it should be determined by the judge by personal inspection and examination, or whether a jury should be impanelled to try the issue? Counsel were heard; the court took time to consider, and subsequently, on the 24th of June, announced its determination to inform its conscience upon the insanity of the prisoner by the verdict of a jury. Hon. John Van Buren had now come to the assistance of the district-attorney, and Mr. Seward was aided by David Wright, Christopher Morgan, and Samuel Blatchford, Esquires. A jury was then drawn. The counsel for the prisoner exercised to the full the extremest liberty of challenging the jurors who were drawn. Challenge for principal cause and for favor were allowed, but the court would not permit upon this issue a peremptory challenge. Upon each chal-

lenge for favor two triors were appointed, whose verdict was "that they found the juror indifferent upon the issue of insanity." The evidence before this jury was in a great measure the same as was subsequently given in the trial upon the main issue. The opinions of distinguished physicians and scientific men were taken, and after a laborious and hard-fought fight, (for it was little else,) in a court-room thronged with an excited mob, the jury, under the direction of the judge, found the following "contemptible compromise verdict in a capital case," which was delivered to the court in writing: "We find the prisoner sufficiently sane in mind and memory to distinguish between right and wrong." The counsel for the prisoner at once excepted to this verdict, and requested the court to order the jury to find whether the prisoner was "sane or insane," but the court refused, and directed the verdict to be entered upon the rolls of the court as rendered, saying, that under the rule laid down in his charge it was equivalent to a verdict of sanity.

The fact of the prisoner's sanity being thus found, he was placed at the bar; the indictment was read, and he was asked by the district attorney whether he demanded a trial, to which he answered "no." To the question, whether he had counsel, he replied, "I don't know;" and when asked whether he was able to employ counsel, his answer was "no." Under the direction of the judge the clerk then entered the plea of "not guilty." Motions were unsuccessfully made on the part of the counsel for the prisoner to postpone the trial, and to change the venue. With these motions, and with empanelling the jury, four days were spent. At length, upon the 10th July, the trial of the main issue commenced.

Athough the technical plea of "not guilty" had been put in, yet the whole defence was insanity, and all the evidence that was introduced was to this point. In addition to the facts stated in the general outline of the case, it was proved on the part of the defence, that a great change had come over the prisoner since his youth and boyhood; that he was then "a lively, smart boy, laughed, played, and was good-natured, understood as well as anybody, could tell a story right off, talked like other folks;" that he could read simple lessons in the spelling-book pretty well, and was a lad of ordinary intelligence, for a boy of his condition; that he was sent to the

state-prison at the age of sixteen, and wept upon entering — his last manifestation of a rational mind; that while there he appeared passionate, sullen, stupid, irritable and malicious, took no notice of anything, and was in intellect little above a brute; that he would have frequent freaks of laughing, without any observable cause; that he often violated the rules of the prison; that he was discharged from the Sunday school in the prison because he could not be taught to read; that when his term of sentence had expired, and, upon leaving prison, the usual gratuity of two dollars was given him, for which he was required to sign a voucher, he refused, saying, 'I have been in prison five years unjustly, and ain't going to settle so;' that after he left the prison the same marked difference was seen; that his deafness, dulness and stupidity continued; that he could not read; that he did not know the value of money; in a word "that the bright, lively, social, active youth of sixteen, had become a drivelling, simple fool;" that he would run to and fro in the street, apparently without any object; that he never commenced conversation with anybody, and never asked a question; that he would get up nights, take his saw, and go out as if he was going to work, would come back again and go to bed, and that on these occasions he appeared to be singing and dancing; that he would sit quietly in the corner, "snivelling, snickering and laughing, and having a kind of simple look;" that during the whole of the trial he manifested no anxiety, and took no interest in anything that was going on around him; that an unmeaning, idiotic smile was almost constantly upon his lips, without regard to his position or circumstances; that when removed from the court-house to the prison, he would throw himself, even in the daytime, upon the stone floor of his cell and sleep soundly and peacefully until he was again led before the jury; that he was insensible to bodily pain; that he answered in the same manner those who questioned him, whether they were to be witnesses for or against him; that in one instance a physician, who had been on the stand, swearing away his life on confessions already taken, followed him to his cell, and that he there sat down on his bench and made further confessions for hours, all the while holding the lamp by which the testimony, obtained for the purpose of sealing his fate beyond a possible deliverance, was

recorded; that there was no motive for the deed; that there was no evidence that he ever had a forethought of slaying Van Nest; that neither Van Nest, nor any of his kindred or connections, ever knew of the prisoner, or had in any way the remotest connection with the prosecution for the stealing of the horse. Evidence was also introduced of several conversations that had been held with the prisoner, in which his answers were incoherent, vague and irrational. When asked what words passed between him and Van Nest on the night of the tragedy, he answered that Van Nest said, "If you eat my liver, I'll eat yours." When asked what he knew about Jesus Christ, he replied, "that he came to Sunday school in the state prison." When questioned as to his motives for committing the crime, the following conversation ensued:

"Why did you kill those people? '*I've been to Prison wrongfully five years. They wouldn't pay me.*' Who? '*The people, so I thought I'd kill somebody.*' Did you mean to kill one more than another? '*No.*' Why did you go so far out of town? '*Stopped at one place this side; wouldn't go in; couldn't see to fight; 'twas dark; looked up street; saw a light in next house; thought I'd go there; could see to fight.*' Don't you know you've done wrong? '*No.*' Don't you think 'twas wrong to kill the child? After some hesitation he said, '*Well — that looks kind o'h-a-r-d.*' Why did you think it was right? '*I've been in Prison five years for stealing a horse, and I didn't do it; and the people won't pay me; made up my mind, ought to kill somebody.*' Are you not sorry? '*No.*' How much pay do you want? '*Don't know; good deal.*' If I count you out a hundred dollars, would that be enough? *He thought it wouldn't.* How much would be right? '*Don't know.*' He brightened up, and finally said he thought '*about a thousand dollars would be about right.*'"

On the part of the prosecution, it was admitted, that they could not say what was the motive for committing the murder, although it might have been revenge or plunder; that there was no feigning insanity, on the part of the prisoner, but that the facts and words relied on by the prisoner's counsel did not prove that he was insane. Evidence was put in, that the prisoner had been, from boyhood, driven by slight causes into bursts of ungovernable passion; that he was always violent and vicious in his temper; that on the Monday preceding the 12th March, he had been to the house of Van Nest, to procure employment, but was unsuccessful; that he had lived with Van Nest previously, and was therefore acquainted with the premises; that he had visited the woman, for stealing

whose horse he had been convicted, inquired in regard to it, said he had been wrongfully imprisoned for stealing it, and wanted a settlement; that, after the murder, he rode into her yard, but there being lights there and he being wounded, he rode off; that he had told a negro companion, about a week before the murder, that he had found the persons who swore him into prison, and that he was going to kill them, that their name was Van Nest; that he had confessed that he killed the Van Nests, because they swore him into prison; that he was drunk on the day of the murder, and had drank a pint of liquor that afternoon; that a week before the murder, he went to one Morris, a blacksmith, and wished a knife made in a certain manner, of good cast steel; that, failing satisfactorily to describe what he wanted, he went to a carpenter's shop, made a pattern of wood, and brought it back in a short time to Morris; that there being a difficulty about the price, the knife was not made; that during the conversation, Morris said, "You want to kill somebody, don't you?" to which the prisoner replied: "It is none of your business, so long as you get your pay for it;" that he went, subsequently, to one Hyatt, and after considerable chaffering and cheapening, bought a knife of him; that he was entirely unknown to Morris and Hyatt; that, about the same time, he fitted a blade into the end of a large hickory club; that he carefully concealed both of the knives from the woman at whose house he lived; that the night before the murder, he was at a dance; that on the evening of the murder he was at his boarding-house as late as six o'clock in the evening; that he asked the woman if she had anything for him to do; that, by his own admission, "he then went up stairs, threw the knives out of the window, hid them under the wood-pile until he was ready to start, then stood around and thought of it awhile, then concluded to go anyhow, got his knives, secreted them in his breast under his coat, and started;" that he went four miles to the house of Van Nest, and lay concealed until a man who was passing the evening there had left; that he stole a horse, rode forty miles in the direction of the Canadas to some connections of his by marriage; that they, suspecting he had stolen the horse, turned him out of the house; that he rode a few miles further and offered the horse for sale; that he said that he had one given to him, and had traded round until he got this one; that when arrested for the

murder, he denied all knowledge of Van Nest; that when pressed, and asked where he came from, he said, "I shan't answer any more; if they can prove anything against me, let them prove it;" that he was identified by Van Arsdale, as the murderer; and that (it was argued) he subsequently admitted the crime, as no admission could then prejudice his case.

This plain recital of the main facts upon both sides of the case, though it may sufficiently explain its legal merits, will be tame and vapid to one who reads the full report. No idea can be formed of the fierce excitement that gained strength with each day of the protracted trial, without reading the trial itself and noting the marks of feeling and of passion in the answers of the different witnesses. There was no impartiality there. The verdict of the jury even must have been a foregone conclusion. Nor were the court beyond the influence. Throughout the trial their rulings were against the prisoner. When pronouncing sentence of death, addressed not to the prisoner but to the audience, the judge took pains to say, that by a double verdict the prisoner's sanity was settled beyond a doubt, and that the court unanimously concurred in that opinion. The popular current was all against the prisoner. The defence of insanity was hooted. Every trifling peccadillo that a lively negro boy in such a village as Auburn could be guilty of, was remembered against him, and every dram he had drank, and every oath his untaught tongue had uttered, were counted up and magnified into proofs of habitual intemperance and profanity.

Upon the issue of insanity, sixty-five witnesses were examined, seventeen of whom, including nine physicians, thought the prisoner insane; and the rest, including eight physicians, testified that, in their opinion, the prisoner was sane. The cross-examination of these witnesses was adroit and able, and took the widest range. Morals and manners, ethics and metaphysics, idiocy, mania and dementia, in all their various forms, — upon all these subjects were the witnesses questioned, and in the cross-examination their opinions were subjected to the keenest scrutiny. As a specimen of legal dissection, and as a gladiatorial exhibition of professional skill, few cases equal it. The history too of the plea of insanity had been well studied, and adjudged cases, and the opinions of eminent writers, were freely read to the jury and commented upon.

The arguments of counsel upon both sides were exceedingly able. That of Mr. Seward, showed a thorough and accurate knowledge of the whole law touching the plea of insanity; and that of Mr. Van Buren, great adroitness in managing the popular side of an exciting case. We cannot do better than to present to our readers some specimens of the peculiar eloquence of each of these advocates. The first extracts are from Mr. Seward's argument. He is commenting upon the testimony of a physician, who was sworn on the part of the people, and who had prepared a diagram illustrating his views of the operation of the different faculties of the mind.

"The Doctor overwhelms us with learning, universal and incomprehensible. Here is his map of the mental faculties, in which twenty-eight separate powers of mind are described in odd and even numbers. The arrows show the course of ideas through the mind. They begin with the motives in the region of the highest odd numbers in the south-west corner of the mind, marked A, and go perpendicularly northward, through Thirst and Hunger to Sensation, marked B; then turn to the right, and go eastward, through Conception, to Attention, marked C, and then descend southward, through Perception, Memory, Understanding, Comparison, Combination, Reason, Invention, and Judgment; wheel to the left under the Will, marked D, and pass through Conscience, and then to V, the unascertained centre of Sensation, Volition, and Will. This is the natural turnpike road for the ideas when we are awake and sane. But here is an open shunpike, X, Y, Z, on which Ideas, when we are asleep or insane, start off and pass by Conscience, and so avoid paying toll to that inflexible gatekeeper. Now all this is very well, but I call on the Doctor to show how the fugitive idea reached the Will at D, after going to the end of the shunpike. It appeared there was no other way but to dart back again, over the shun-pike, or else to go cringing, at last, through the iron gate of Conscience. Then there was another difficulty. The Doctor forgot the most important point on his own map, and could not tell, from memory, where he had located "*the unascertained centre.*"

That the prisoner was insane,

"There is proof, gentlemen, stronger than all this. It is silent, yet speaking. It is that *idiotic smile* which plays continually on the face of the Maniac. It took its seat there while he was in the State Prison. In his solitary cell, under the pressure of his severe tasks and trials in the work-shop, and during the solemnities of public worship in the chapel, it appealed, although in vain, to his task-masters and his teachers. It is a smile, never rising into laughter, without motive or cause — the smile of vacuity. His mother saw it when he came out of Prison, and it broke her heart. JOHN DEPUY saw it and knew his brother was demented. DEBORAH DEPUY observed it and knew him for a fool. It has never forsaken him in his later trials. He laughed in the face of PARKER, while on confession at Baldwinsville. He laughed involuntarily in the faces of

WARDEN, and CURTIS, and WORDEN, and AUSTIN, and BIGELOW and SMITH, and BRIGHAM, and SPENCER. He laughs perpetually here. Even when VAN ARSDALE showed the scarred traces of the assassin's knife, and when HELEN HOLMES related the dreadful story of the Murder of her patrons and friends, he laughed. He laughs while I am pleading his griefs. He laughs when the Attorney General's bolts would seem to rive his heart. He will laugh when you declare him guilty. When the Judge shall proceed to the last fatal ceremony, and demand what he has to say why the Sentence of the Law should not be pronounced upon him, although there should not be an unmoistened eye in this vast assembly, and the stern voice addressing him should tremble with emotion, he will even then look up in the face of the Court and laugh, from the irresistible emotions of a shattered mind, delighted and lost in the confused memory of absurd and ridiculous associations. Follow him to the scaffold. The executioner cannot disturb the calmness of the idiot. He will laugh in the agony of death. Do you not know the significance of this strange and unnatural risibility? It is a proof that God does not forsake even the poor wretch whom we pity or despise. There are, in every human memory, a well of joys and a fountain of sorrows. Disease opens wide the one, and seals up the other forever."

"The circumstances under which this trial closes are peculiar. I have seen capital cases where the parents, brothers, sisters, friends of the accused surround him, eagerly hanging upon the lips of his advocate, and watching in the countenances of the Court and Jury, every smile and frown which might seem to indicate his fate. But there is no such scene here. The Prisoner, though in the greenness of youth, is withered, decayed, senseless, almost lifeless. He has no father here. The descendant of slaves, that father died a victim to the vices of a superior race. There is no mother here, for her child is stained and polluted with the blood of mothers and of a sleeping infant; and "he looks and laughs so that she cannot bear to look upon him." There is no brother, or sister, or friend here. Popular rage against the accused has driven them hence, and scattered his kindred and people. On the other side I notice the aged and venerable parents of VAN NEST, and his surviving children, and all around are mourning and sympathizing friends. I know not at whose instance they have come. I dare not say they ought not to be here. But I must say to you that we live in a Christian and not in a Savage State, and that the affliction which has fallen upon these mourners and us, was sent to teach them and us mercy and not retaliation; that although we may send this Maniac to the scaffold, it will not recall to life the manly form of VAN NEST, nor reanimate the exhausted frame of that aged matron, nor restore to life and grace, and beauty, the murdered mother, nor call back the infant boy from the arms of his Savior. Such a verdict can do no good to the living, and carry no joy to the dead. If your judgment shall be swayed at all by sympathies so wrong, although so natural, you will find the saddest hour of your life to be that in which you will look down upon the grave of your victim, and "mourn with compunctious sorrow" that you should have done so great injustice to the "poor handful of earth that will lie mouldering before you."

What follows, is from the argument of Mr. Van Buren. He is commenting upon the testimony of some of the most important witnesses for the defence.

"Allow me to say, that I feel, in common with the whole public, the obligations we are under to Dr. Brigham, for his unwearied efforts and extensive researches in the humane and benevolent mission of alleviating the unfortunate condition of those whom God has bereft of reason. The great good he has thus accomplished reflects credit on him, on the Institution over which he presides, and on the State, and elevates the social condition of the age. I admire his intelligence in his profession, and his kindness of heart; and I feel happy to think that the acquaintance I have enjoyed with him for years might almost give me the right to claim him as a personal friend. But you and I see perfectly the difficulty with him as a witness on the stand. He is as profoundly ignorant of Law as he is familiar with Medicine. He is utterly unaccustomed to the prejudice, perversion and perjury of witnesses; and coming from the Asylum with a conviction that Freeman must be insane because he does not assign, and the Doctors cannot guess, an adequate motive for the crime, his only inquiry is, to which class of insane persons he shall assign the Prisoner; and without stopping to reflect whether the Prisoner or his witnesses may not lie, he notes down, as the trial proceeds, here a fact denoting Dementia, and there another indicating Homicidal Monomania; now something that looks like General Mania, and there a suspicion of Cleptomania; occasional symptoms of Macho Mania, and again strong manifestations of the Lying Mania. On such testimony he builds his theory. He will not sit still to hear a witness cross-examined. If the witness John De Puy (the brother-in-law of Prisoner, whom I moved to have committed for glaring perjury on the stand, a motion yet undisposed of,) swears to Freeman's being up at night, dancing when he should have been asleep, Doctor Brigham makes a memorandum — "*Restless nights — Insanity;*" and I can't get him to sit still till the cross examination shows that the true entry should be "*Negro Frolic — Rum.*" He will not believe our witnesses because they do not see what he has pre-determined exists. He believes the Prisoner's mother quicker than a disinterested witness. When asked if he relies on an unchaste black, he replies with charming ingenuousness, "I do believe Deborah." You can furnish him no proofs of sanity, for there is nothing he has not seen or heard of insane people doing. He is filled with vagaries of the insane — ignorant almost of the habits of the sane. With the nature of blacks he is peculiarly unfamiliar. He does not know whether they ever tan. He cannot tell whether illness makes them pale. He thinks Freeman ought to have fled faster, yet he cannot tell the distance a horse will ordinarily travel in a day."

"Did Mr. Austin think him insane in jail? He swears he prayed with him; and I can hardly believe that he would pray with an insane man. Pray for him he might and ought, but I hardly think he would pray with him. His examinations of the prisoner have been most singular. In regard to the fundamental principles of religion he never questioned him.

These, he says, he supposed he knew, and yet these would seem to be the precise subjects of christian inquiry, and instruction in these, all important to the prisoner's salvation. Neither Mr. Austin nor any other witness ever attempted to set Freeman right as to a single notion he entertained, which might influence his future conduct. So far from it, efforts were continually made to lead him from one folly or absurdity to another. When Hopkins understood him to say he had seen Jesus Christ in Sunday school, instead of correcting or reproving this unhappy creature on the brink of destruction, Hopkins asked him whether Jesus Christ took a class, and whether he preached or talked! Dr. Austin gave him a testament, and he is the first man who is proved to have witnessed the prisoner's peculiar manner of reading. Has he tried to correct him? Has anybody attempted to teach him to read? Witness upon witness has been taken to the jail to see the prisoner run his fingers along the sacred pages and repeat the words 'O Lord — Jesus Christ — Mercy — Moses,' which were not on the pages, and yet Dr. Austin, instead of stopping this mummery, furnished the testament, first witnessed the performance, and has again and again superintended it since! If the Rev. Mr. Austin knew the natural disposition of the negro as well as I do, and his clerical duty as well as I hope he does, he would have taken Freeman a jewsharp, instead of a testament, to play on!"

"I know there is always a disposition to forget the dead over whom the grave has closed, and to sympathize with the living criminal, no matter how debased and degraded. But I cannot believe that when such a man as John G. Van Nest is cut off in the prime of life, with everything about him to make the world attractive, and sent, without an instant of preparation, to stand before his Maker, that a jury of his neighbors and friends will set at large the instrument of his destruction. It is to me, as you must know, a matter of no concern, personally. The Van Nests were unknown to me; and although the heart of this family tree has been cut out, leaving behind nothing but the dependent branches and decaying roots, I have lost neither acquaintances nor friends. This miserable prisoner can excite no antipathy; he is unworthy of the hostility of any human being. The danger to the peace of this community only affects me, as a lover of good order. If crimes of this magnitude are to go unpunished, and thus to invite imitation, it is your hearth-stones, not mine, that may be drenched in blood. But I do confess to a feeling of pride at the administration of justice in our state. Elsewhere, the murderer may go at large as a somnambulist, an insane man, or a justifiable homicide. But in New York, thus far, the steady good sense and integrity of our juries, and the enlightened wisdom of our judges, have saved our jurisprudence from ridicule, and firmly upheld law and order. Thus may it ever be; and I feel entire confidence, notwithstanding the extraordinary appeals that have been made to you in this case, that your verdict will be in keeping with the high character our tribunals have thus acquired, and will prove that the jurors of Cayuga fully equal their fellow citizens of other counties, in intelligence to perceive, and independence to declare the guilt of a criminal."

The case was submitted to the jury, who brought in a verdict of guilty on the 23d of July; and at half past six o'clock on the morning of the 24th, sentence of death was passed upon the prisoner. A writ of errror was allowed, and the case was carried before the supreme court for review; and after argument, in the November following, the exceptions were sustained, and a new trial ordered. Meanwhile, the prisoner remained in chains, in the jail of Cayuga county. When a new trial was granted, he was examined by the circuit judge in reference to his mental condition and the propriety of a second trial, and was found to have declined gradually in health and strength, and to be as unconcerned about his fate, as when upon the trial for his life. He was never tried again, but died in his cell, August 21, 1847. A post mortem examination showed a chronic disease of the brain, and that the left temporal bone, in the vicinity of the auditory nerve, was carious and much diseased.

We cannot close our imperfect notice of this exciting and remarkable trial, without expressing our unqualified admiration at the conduct of the counsel for the defence. Amid the execrations and denunciations of the thoughtless, and the unmeasured censure of those who would call themselves law-abiding men, — hampered and thwarted by the court, with no expectation of reward or recompense of fame, they discharged fearlessly and faithfully their sacred duty to the prisoner, to their profession, and to society. To the senior counsel, particularly, is especial honor due. Having enjoyed the highest political honor in the gift of the citizens of his state, at the head of his profession, in feeble health, and with multiplied professional engagements, he could well have resisted the urgent solicitations of the few philanthropic individuals who believed the prisoner insane. But he had not so learned his duty. Believing that the deepest interests of society were at stake, and shocked that a maniac should be tried as a malefactor, regardless of personal considerations, he interposed in the prisoner's defence with the determination to stand by him until his steps should lose their hold upon the scaffold. To his conduct, in this case, the history of jurisprudence furnishes many contrasts, but no parallel. Through his efforts, mainly, it is that, in this instance, the stain of judicial murder does not rest upon the escutcheon of New York.

Recent American Decisions.

Supreme Court, Illinois, December Term, 1847.

ORRIN SHERMAN ET AL., PLAINTIFFS IN ERROR, *v.* HENRY GASSETT ET AL., DEFENDANTS IN ERROR.

Error to Cook County Court.

To a *scire facias* to foreclose a mortgage, the defendants pleaded the usury laws of Massachusetts, alleging in substance, their indebtedness to plaintiffs; that in order to obtain forbearance thereon, they executed certain notes therefor, payable in Boston at intervals, with ten per cent. interest semi-annually, which notes were intended to be secured by the mortgage sued on; and that, though the notes appear on their face to have been executed in Chicago, they were in fact executed in Boston. The mortgage was acknowledged and recorded in Cook county, on the day of its date: *Held*, that the forfeiture provided for in the usury laws of Massachusetts being a part of the law of remedy, could not be enforced by the courts of this state.

It is a well-settled rule, that the courts of one country will not enforce either the criminal or penal laws of another; nor will they carry out or be guided by the laws of another, regulating the forms of actions, or the remedies provided for civil injuries. But it is equally well settled, that in the construction of contracts, and in ascertaining whether they are valid, the law of the country where the contract was made, or to be performed, shall in general, govern.

The *lex loci* only governs in ascertaining whether a contract is valid, and what the words of the contract mean. When the question is settled, that the contract of the parties is legal, and what is the true interpretation of the language employed by the parties in framing it, the *lex loci* ceases its functions, and the *lex fori* steps in and determines the time, the mode, and the extent of the remedy.

To a *scire facias* to foreclose a mortgage, a plea commencing as a plea of part payment, and concluding by praying judgment, was interposed, to which there was a general demurrer, which was sustained: *Held*, that payment in part, or in whole, might properly be pleaded, and that, in this case, if the plea had been specially demurred to, it should have been held bad.

SCIRE FACIAS, to foreclose a mortgage, issued from the Cook county court, at the instance of the defendants in error, against the plaintiffs in error. The cause was heard before the Hon. Hugh T. Dickey, on demurrers to pleas. The demurrers were sustained, and the defendants brought their writ of error to reverse the decision of the court.

The substance of the pleas are stated in the opinion of this court.

A. T. Bledsoe, for the plaintiffs in error.

L. Trumbull, for the defendants in error, argued,

1. The pleas of usury are defective in not averring that the law of Massachusetts, set out in said plea, was in force at the time of the execution of said mortgage, and of filing said pleas.

None of said pleas, or the plea of payment, profess to answer the whole cause of action, and the plaintiffs were at liberty to treat all of said pleas as nullities, and take judgment as by *nil dicit*, or they might demur. Gould's Pl. 363; *Fitzgerald* v. *Hart*, (4 Mass. 429); 11 Pick. 75; *Sterling* v. *Sherwood*, (20 Johns. 206); *Hickok* v. *Coates*, (2 Wend. 421); *Slocum* v. *Despard*, (8 Ib. 617); *Phelps* v. *Sowles*, (19 Ib. 547); *Mee* v. *Tomlinson*, (31 Eng. Com. Law R. 66.)

The judge who tried this cause below, certifies that the plea of payment was not passed upon by him upon the argument, and the attention of the court below not being called to said plea, it is too late to urge in this court for the first time, that said plea was sufficient. *Gelston* v. *Hoyt*, (13 Johns. 575); *Bell* v. *Bruen*, (1 Howard's U. S. Rep. 187; 3 Ib. 530.)

2. The mortgage being made and executed in Illinois, must be governed by the laws of Illinois. *Chapman* v. *Robinson*, (6 Paige, 627.)

3. The statute of Massachusetts does not make a contract for taking more than six per cent. void, but applies to the remedy and inflicts a penalty. Rev. Stat. Mass. 307.

Penal laws are local. Story's Confl. of Laws, § 619, *et seq.* Remedies upon contracts are governed by the law of the place where the action is instituted. 2 Kent's Com. 462.

That the statute of Massachusetts is penal, and applies to the remedy only, is established by her own courts. *Gale* v. *Easton*, (7 Metc. 14.)

The opinion of the court was delivered by

Lockwood, J. The plaintiff below sued out of the county court of Cook county, a *scire facias* against Sherman & Pitkin, to foreclose a mortgage, dated September 1st, 1842. The mortgage was duly acknowledged and recorded on the day it bears date, and was executed to secure the payment by the mortgagors to the mortgagees of three several promissory notes, amounting to the sum of $7000, dated the 15th of June, 1842. The time when the notes were to fall due, is not stated in the

mortgage, but the *scire facias* avers they had all fallen due. The mortgage recites that Sherman & Pitkin are residents of the county of Cook, in the state of Illinois, and the plaintiffs below are residents of the state of Massachusetts. Sherman & Pitkin pleaded four special pleas of usury, in violation of the laws of Massachusetts, and a plea of part payment. To all these pleas, Gassett & Co. severally demurred, and the court sustained the demurrers, and rendered judgment for the plaintiffs for the amount due on the mortgage, and that the mortgaged premises be sold.

The errors relied on, are the sustaining the demurrers to all the pleas of the defendants. The four pleas of usury are substantially alike, and aver that Sherman & Pitkin being largely indebted to Gassett & Co., who were merchants, residing and doing business in the city of Boston, for goods previously sold to them, on the 15th day of June, 1842, in order to obtain forbearance on said indebtedness, it was corruptly agreed that Sherman & Pitkin should execute to Gassett & Co. three several promissory notes, payable in twelve, twenty-four, and thirty-six months, at Gassett & Co.'s office in Boston, with interest at the rate of ten per cent. per annum, payable semi-annually. The pleas state that the notes, although they appear on their face to have been executed in Chicago, in this state, yet were executed in Boston.

These pleas further aver, that the mortgage recited in the *scire facias*, was executed to secure the payment of said notes. The pleas further aver, that on the 15th of June, 1842, it was provided and enacted by the laws and statute of the commonwealth of Massachusetts, of which commonwealth Boston was the capital, "that the interest of money should be six dollars and no more upon one hundred dollars for a year, and at the same rate for a greater or less sum, and for a longer or shorter time;" and that, "whenever an action shall be brought upon any contract or assurance, and it shall appear upon special plea to that effect, that a greater rate of interest has been directly or indirectly reserved, taken or received, the plaintiff shall forfeit threefold the amount reserved or taken, and shall have judgment for the balance only, which shall remain due after deducting said threefold amount." The defence set up in the defendants' pleas of usury, is unconscientious and inequitable,

and should not be sustained unless some stern rule of law requires it. In equity, the original debt and legal interest are justly due, notwithstanding an agreement to pay more than legal interest. Where a creditor, however, has acted oppressively towards his debtor, or has evinced a manifest disposition to violate the laws of the country where the contract is made or to be performed, justice requires that courts should be astute in ascertaining if there be not some rule of law that will enable them to punish the oppressive creditor, or the wilful violator of the law. These pleas, instead of disclosing any oppression on the part of Gassett & Co. towards Sherman & Pitkin, clearly evince a great degree of forbearance and lenity. Sherman & Pitkin were residents of the state of Illinois, where it was legal to stipulate for the payment of twelve per cent. interest; consequently, the agreement to pay ten per cent. did not violate any law of this state. What law, then, has been violated by the contract between the parties? It is apparent that the mortgage was executed in Illinois, for it was acknowledged and recorded in Cook county, on the day it bears date, and as it does not specify any place of payment, were it not for the notes recited in the pleas, the legal presumption would be, that the mortgage was payable in Illinois, where the land was situated and the mortgagors resided, and in that event the mortgage would be free from any taint of usury. The pleas, however, aver that the mortgage was executed to secure the payment of three promissory notes, with ten per cent. interest, which notes, it is alleged, were executed in Boston and made payable there.

It is a well-settled rule of jurisprudence, that the courts of one country will not enforce either the criminal or penal laws of another. Nor will the courts of one country carry out or be guided by the laws of another regulating the forms of actions, or the remedies provided for civil injuries. But it is equally well settled, that in the construction of contracts, and in ascertaining whether they are valid, the law of the country where the contract was made or to be performed shall in general govern. It might in this case be urged, with great propriety, that a mortgage on real estate should be governed by the *lex situs*, and consequently not be affected by the usury laws of the place where it may have been executed, or where the money is to be paid; the presumption being that the parties must have had

the laws of the country in view where the land was situated, and where suit must be instituted in case of foreclosure. The case of *Chapman* v. *Robinson*, (6 Paige, 627,) was decided on this principle. In that case a loan was negotiated in England, where the creditor lived, to be secured by personal security and a mortgage on real estate in New York, where the borrower resided. Seven per cent. interest was reserved in the mortgage, which was higher than the rate of interest allowed by law in England, although authorized by the laws of New York. Chancellor Walworth, in delivering his opinion, says: "Upon a full examination of all the cases to be found upon the subject, either in this country or in England, none of which, however, appear to have decided the precise question which arises in this case, I have arrived at the conclusion that the mortgage executed here, and upon property in this state, being valid by the *lex situs*, which also is the law of the domicil of the mortgagor, it is the duty of this court to give full effect to the security, without reference to the usury laws of England, which neither party intended to violate, by the execution of a mortgage upon the lands here." The chancellor, in that opinion, further says, "But if a contract for the loan of money is made here, and upon a mortgage of lands in this state, which would be valid if the money was payable to the creditor here, it cannot be a violation of the English usury laws, although the money is made payable to the creditor in that country, and at a rate of interest which is greater than is allowed in England." This question was fully and ably examined by Judge Martin, in the case of *Depeau* v. *Humphreys*, (20 Martin, 1,) in the supreme court of Louisiana; and that court came to the conclusion, in which the chancellor says he fully concurs, "that in a note given at New Orleans, upon a loan of money made there, the creditor might stipulate for the highest legal rate of conventional interest allowed by the laws of Louisiana, although the rate of interest thus agreed to be paid was higher than that which could be taken upon a loan by the laws of the state where such note was made payable." The chancellor continues: "Here the verbal contract for a loan upon the security of a mortgage on lands in this state, was wholly inoperative, until the mortgage and other written security were executed in this state, and which agreement was consummated by the deposit of the money (in Eng-

land) to the order of the borrower. It was a contract partly made in this state and partly in England. And being actually made in reference to our laws, and to the rate of interest allowed here, it must be governed by them in the construction and effect of the contract as to its validity. An appeal to the courts of this state was also contemplated by the parties, if necessary to enforce a performance of the written agreement for the repayment of the loan, although from the residence of the mortgagee in England, it might be necessary to send the money there to make a legal tender of the debt."

In the case of *Robinson* v. *Bland*, (2 Burr. 386,) which is a leading case on the subject of the *lex loci*, Lord Mansfield holds the following emphatic language: "In every disposition or contract, where the subject-matter relates locally to England, the law of England must govern, and must have been intended to govern. Thus a conveyance or will of land, a mortgage, a contract concerning stocks, must be all sued upon in England, and the local nature of the thing requires them to be carried into execution according to the law here."

These authorities come from sources of the highest respectability, and being consonant with the principles of equity and justice, would, in my opinion, justify this court in coming to the conclusion that the mortgage being executed here, and this being the domicil of the mortgagors, the law of this state ought to govern in its construction. But as I conceive it is not necessary to place the decision on this point, I am willing to concede, that if the mortgage was given to secure the payment of promissory notes, which were void by the usury laws of Massachusetts, then this court would be bound, however contrary to the principles of honorable dealing we might consider the defence, to decide that a contract, void where it was made or to be performed, was void here. The statute of Massachusetts in relation to usury, however, does not declare the contract void, but authorizes a suit to be sustained on it, and inflicts a forfeiture of a part of the debt, as a penalty for violating the act; and points out a particular mode by which the forfeiture shall be enforced. On this statute the question arises, is this forfeiture a penalty? And if not a penalty, then are means provided for its recovery addressed to the courts of Massachusetts solely, or, in other

words, are the means of recovering the penalty, a part of the law of remedy, and consequently confined to the *lex fori*.

The answer to the question, whether the forfeiture is not a penalty, which foreign courts will not enforce, is not free from difficulty. If it is not a penalty, it closely resembles one, for a heavy forfeiture is imposed for the violation of the statute. Webster defines the word "forfeit" as follows: "To lose or render confiscable by some fault, offence or crime; to lose the right to some species of property or that which belongs to one." And under the noun he defines it, "that which is forfeited or lost, or the right to which is alienated by a crime, offence, neglect of duty or breach of contract, hence a fine, a mulct, a penalty. He that murders pays the forfeit of his life. When a statute creates a penalty for a transgression, either in money or in corporal punishment, the offender who on conviction pays the money or suffers the punishment, pays the forfeit." It would seem that these definitions of the word "forfeit," would constitute the forfeiture provided by the act of Massachusetts, a penalty. It was, however, inquired on the argument, if the Massachusetts act inflicted a penalty for taking usurious interest, that foreign courts would not enforce, why will foreign courts enforce the usury statutes of England, and some of the United States? The answer to this inquiry is, that in England their statute absolutely forbids the making of any contract infected with usury, and renders the whole contract null and void; and so are the usury laws in several of the United States. A contract, being absolutely void where it was made, cannot become valid by transportation. It being once corrupt, it cannot become pure by change of time or place. As has been conceded, if the statute of Massachusetts had declared the contract void, no court would enforce it. But having only inflicted a forfeiture or penalty on the person who attempts to violate it, it seems but reasonable to consider the forfeiture as a penalty, which the courts of Massachusetts can alone render effectual.

But, whether this question be decided in the affirmative or not, I think there is no difficulty in ariving at a satisfactory conclusion on the question, whether the forfeiture is not governed by the law of remedy, and can alone be enforced in the *lex fori*. The statute directs, that when an action shall be

brought on any contract tainted with usury, and it shall appear by special plea to that effect, that a greater rate of interest, &c., the plaintiff shall forfeit threefold, &c., and shall have judgment for the balance only. The act points out a particular mode, by which the forfeiture is made available to the defendant, and if he neglects that mode, he loses the forfeiture. The mode of reaching the forfeiture is made by the statute a matter of substance, that cannot be dispensed with in the courts of Massachusetts. This circumstance alone renders the forfeiture a part of the law of remedy, which can only be enforced in the *lex fori*. To test this question, suppose this action had been commenced in a state where all special pleas are forbid by statute, and the defendant had specially plead the facts and statute of Massachusetts, would the courts of such state, on demurrer, have hesitated to decide that the special plea was bad? Such necessarily would be the decision. Again, suppose the defendant had plead the general issue, and had offered on the trial the statute of Massachusetts, with the facts going to establish the usury, would the court have received the evidence? Certainly not, because the defendant had not complied with the mode required by the statute to entitle him to the forfeiture. If, however, the whole contract had been void, no such difficulty would be experienced; for no court will sustain an action upon a void contract, and its invalidity would be matter of defence under the general issue. We have a similar act in relation to usury, to that which exists in Massachusetts, with this difference, that our act requires, when usury is pleaded and proved, that the defendant shall recover his full costs, and that two-thirds of the forfeiture shall be paid into the treasury of the county in which the suit shall have been instituted, and each of the parties may be sworn as witnesses. Suppose that an action was brought on an usurious contract made in Illinois, in the Courts of Massachusetts, where by law, if the plaintiff recovers anything, he recovers costs, and where neither party can be witnesses, would the courts of Massachusetts give effect to the forfeiture, by declaring that one-third should be paid to the defendant, and two-thirds to the county, and violate their own laws, by giving judgment against the plaintiff for costs, and also suffer the parties to be witnesses? There can, it is conceived, be but one opinion on this question. No sound lawyer would

hesitate to reply in the negative. Can any good reason be given, why the act of this state should not be enforced abroad, that will not apply to the usury law of Massachusetts? The objects of both acts are the same — the punishment of a party who exacts usurious interest. The penalty inflicted on the usurer is also the same, the mode of enforcing and disposing of the penalty only being different. The object of both laws, being in harmony, it would appear unreasonable that one statute should be enforced extra-territorially, and the other not. The usury act of Massachusetts, not having declared the contract void, but having furnished a special mode, by which the forfeiture inflicted for its violation shall be recovered, must be considered as part of the law of remedy, and, consequently, can only be enforced in the courts of Massachusetts.

The principle, that the courts of one country will not enforce the law of remedy in another, is settled by numerous decisions. They will be found collected in 2 U. S. Digest, p. 795, title *Limitations of Actions.*

In the case of *Ruggles* v. *Keeler*, (3 Johns. 267,) to a plea of set-off, it was objected that it was barred by the Statute of Limitations of the state of Connecticut, where both parties resided when the set-off arose. Kent, C. J., in delivering the opinion of the court, says: "Statutes of Limitations are municipal regulations, founded on local policy, which have no coercive authority abroad, and with which foreign or independent governments have no concern. The *lex loci* applies only to the validity or interpretation of contracts, and not to the time, mode, or extent of the remedy."

In the case of *Scoville* v. *Canfield*, (14 Johns. 337,) which was debt on a judgment recovered in Connecticut, Spencer, J., in delivering the opinion of the court, says: "Although we notice the *lex loci* in construing and giving effect to the contracts between the parties, we must administer justice to them, according to our laws, and the forms prescribed by our legislature, or the usages of our courts." The judge also says, in the same opinion, "There is another decisive answer as regards the act pleaded. The plea admits the validity of the judgment declared on, and we are called on by the defendant not to apply the *lex loci* in the construction of the contract; but we are required to give effect to a law which inflicts a penalty for

acquiring a right to a chose in action. The defendant cannot take advantage of, nor expect this court to enforce the criminal laws of another state. Penal laws are strictly local, and affect nothing more than they can reach." 1 H. Black. 135; *Foliot* v. *Ogden*, (Cowper, 343.)

The cases above referred to, although not precisely analogous, yet settle the principle that the *lex loci* only governs in ascertaining whether the contract is valid, and what the words of the contract mean. When the question is settled, that the contract of the parties is legal, and what is the true interpretation of the language employed by the parties in framing it, the *lex loci* ceases its functions, and the *lex fori* steps in and determines the time, the mode, and the extent of the remedy.

That the courts in one state will not enforce the usury laws of another, where the contract is not declared void, has recently been decided by the supreme court of Massachusetts — a tribunal whose opinions are entitled to the highest respect. From a careful examination of that case, it will appear that they have put a construction upon their usury act, in relation to the forfeiture set up in the pleas under consideration, which settles the question, that the supreme court of Massachusetts regard the forfeiture as applicable to the remedy, and can only be enforced in their courts.

The case referred to, is *Gale* v. *Easton*, (7 Metc. 14.) The opinion of the court sufficiently explains the nature of the case under discussion. Chief Justice Shaw, in delivering the opinion of the court, says, "By the law of New Hampshire, the contract, even though usury were taken or received upon it, was not void; it was so far legal that an action might be maintained on it with certain deductions. (Act of Feb. 12, 1791.) By the second section it is provided, that when usury is relied upon in defence, a special mode of trial may be offered by the defendant; that is, a trial by the oath of the parties, as formerly practised under the law of Massachusetts, (Stat. 1783, ch. 55,) but which mode of proof and form of trial are not now allowed in this state. By the law of New Hampshire, still in force, if the usury is thus proved, a certain amount shall be deducted, in assessing the damages, from the principal and interest due on the note. These provisions apply only to the remedy, and of course can extend only to suits brought in New Hampshire,

and can have no effect when a remedy is sought under our laws. The general rule is, that those provisions of law which determine the construction, operation and effect of a contract, are part of the contract, and follow it and give effect to it wherever it goes, but that in regard to remedies, the *lex fori*, the law of the place where the remedy is sought, must govern. We therefore cannot be governed by the law of New Hampshire, which professes only to regulate the remedy on an usurious contract. The law of Massachusetts, though somewhat analogous, cannot apply, because although the mode of enforcing the law against usury is by applying it to the remedy, yet the law to be enforced is the law of Massachusetts. The law of this state declaring what shall be the rate of interest, and what contracts shall be deemed usurious, also directs, when suits are brought, what deductions shall be made ; but it is suits brought on such contracts, that is, contracts made in violation of its provisions."

In that case the plaintiff had judgment for his demand, although the usury was admitted by an agreed case.

The principle, fairly deducible from these cases, is, that the forfeiture provided for in the usury act of Massachusetts is part of the law of remedy, and ought not to be enforced by the courts of this state. The court below, consequently, decided correctly in sustaining the demurrers to the defendants' pleas of usury.

The only other question presented by the assignment of errors is, whether the plea of part payment was not a good plea. Payment in whole or part may undoubtedly be pleaded. It was objected, on the argument, that the plea was bad, because it commenced as a plea to part of the plaintiffs' demand, yet concluded by praying judgment. The plea is clearly informal, and had it been demurred to specially, it would have been bad. We are, however, of opinion, that the plea substantially means to say, that defendants have paid $5000 to the plaintiffs, and that in regard to that amount they deny the plaintiffs' right to recover. In this view of the matter, the plea, although informal, is substantially good, and the general demurrer was improperly sustained. For this error, the judgment below must be reversed with costs, and the cause remanded, with instructions to the court below to permit the plaintiffs below to with-

draw their demurrer and take issue on the plea, and then proceed to dispose of the case as shall be consonant to law.

The following dissenting opinion was delivered by

KOERNER, J. I regret that on one point, in the case just decided, I cannot agree with a majority of the court. I mean as to the invalidity of the pleas of usury. The court hold that although the contract in question was made performable in Massachusetts, and usurious under the laws of that state, yet the Massachusetts law cannot be enforced in our state. I understand that this view is founded on the opinion, that the usury laws of another state, where they provide for a partial forfeiture of the debt, is penal in its nature, and also that it is only remedial, not affecting the contract, and that for both these reasons they cannot be enforced here.

It is not denied by a majority of the court, but what the usury laws of the place govern the contract of the place, as far as regards the rate of interest claimed. It is also admitted, that where such laws declare a usurious contract wholly void, such contract, by the comity of nations, cannot be enforced anywhere.

Now, if they were really criminal or penal laws in the proper sense, no other state but the one in which they were violated would take cognizance of them. Laws cannot be criminal in part, and not criminal in part; they must be either the one or the other. The case in 7 Metcalf, 14, does not go on the ground that the usury laws are penal, or criminal laws.

To maintain that we are bound to declare a usurious contract wholly void, when the laws of the contract make it so, whereby the creditor is deprived of the whole of his claim, but that we are not bound to regard the law when it provides for a forfeiture only, by which the creditor loses but a part of his claims, seems to involve a singular inconsistency. It, in other words, involves the following remarkable syllogism: "The law everywhere avoids usurious contracts, when they are declared wholly void by the law of the place. This contract was void in part, and consequently it is good as to the whole."

The decision in Massachusetts proceeds upon the ground, that the usury laws of New Hampshire, (which are analogous to the laws of Massachusetts,) were remedial in their nature,

and therefore could not be applied in Massachusetts. I dissent from this opinion with all due deference to the superior wisdom of that court. If the usury laws of another country are remedial and do not affect the contract, then the usury laws of the state where the suit is brought must apply, because they are remedial. The interest stipulated in the Massachusetts case was usurious according to the law of New Hampshire, as well as that of Massachusetts. If the law is remedial in one, it must be in the other. It seems to me that there is a failure of proper distinction. A law of another state may affect the contract, and also the remedy, in presenting a peculiar mode of trial or a peculiar kind of evidence. As far as such a law operates upon the contract, in declaring it either wholly void, or partially so, or limits and modifies the essential rights growing out of it, it will be enforced by every other state; as far, however, as it affects the remedy, or the means of proceeding to enforce it, it will be disregarded if there is any conflict.

Now, in the present case, by the Massachusetts law, the plaintiffs, having acted in violation of law, must submit to a deduction of their claim, the amount of which deduction to be ascertained by a certain prescribed mode of computation, which every court is able to make. As far as the law operates upon the *quantum* allowed to be recovered of the whole claim, it certainly affects the contract most materially. If the Massachusetts law, however, prescribes rules as to evidence in such cases, or the forms of proceeding, or the sum forfeited, which are inconsistent with our remedial laws, they will be disregarded, and their place will be supplied by our own.

This view of the case, thus briefly, and I fear, imperfectly expressed, seems to me to be sustained by what is said by the supreme court of the United States in the case of *De Wolf* v. *Johnson*, (6 Cond. R. 141.) In that case, the question arose on a contract originally made in Rhode Island, where the usury law did not avoid the contract, or the securities given for it, but only declared a forfeiture of one-third of the principal, and all of the interest of the loan, as a penalty to be recovered by information or action of debt. This law was set up in Kentucky, where such loan, it was contended, had been secured by mortgage. On page 151, the court say, in reply to the argument, that the Rhode Island contract was wholly void: "The law of

Rhode Island certainly forbids the contract of loan for a greater interest than six per cent., and so far no court would lend its aid to recover such interest. But the law goes no further; it does not forbid the contract of loan, nor preclude the recovery of the principal under any circumstances. The *sanctions* of that law, are the loss of the interest and one-third of the principal, if sued for within one year. On what principle could this court add *another* to the penalties declared by the law itself?" I have italicised some of the words just transcribed, in order to make the applicability of the whole passage more apparent.

The policy of the usury laws in general, and the impropriety or iniquity of the decree in this particular case, are subjects on which I am not called upon, by anything in the record, to express an opinion.

Justices CATON and THOMAS concurred in the dissenting opinion. Judgment reversed.

Supreme Court of Vermont, Windham County, Feb. 7, 1848.

AMBROSE BURGESS *v.* BETSEY GATES.

A claim for *mesne profits* is a cause of action, which, if recoverable at all, is one of common law, and not of equity jurisdiction.

Such claim is in its nature local, and if by the law where it occurs it does not survive, it would seem could not be allowed against the estate of the recoveree in ejectment, in another jurisdiction where he had his domicil at the time of his decease, even if such cause of action did there survive.

If it could be allowed against such estate, it is of such a character, that it must be presented to the commissioners of insolvency, or *else it is barred.*

All claims, of a merely legal character, are barred, if not presented.

THIS was a bill in chancery, which came into this court by appeal from the decision of the chancellor. The claim was for *mesne profits*, accruing to the testator in his lifetime, in the state of New Hampshire, for the use of land there situated, the testator having at the time and until his decease, his residence in the state of Vermont. This land was first deeded to the testator by a deed absolute in *form*, but in reality to secure a debt due the testator from the grantor. The grantor being at the same time indebted to the orator in this bill, he subsequently levied upon the land, and brought ejectment against

the testator, and recovered of him upon the ground, that his deed was fraudulent. After final judgment against him for the seisin and possession of the land, the testator brought a writ of review, and, pending that, deceased. This writ, after the decease of the testator, was discontinued. The defendant, who was executor of the will, made probate of the same. Commissioners were appointed to allow all claims presented against the estate, who, in due course of law, reported all such allowances, and the administration was duly closed in the probate court, and the residue of the estate decreed to the defendant as residuary legatee. This claim was never presented to the commissioners. There was no property, and no administration in New Hampshire.

The opinion of the court was delivered by

REDFIELD, J. There seem to us to be three difficulties or doubts in regard to the maintaining the present suit.

1. Whether the right of action survives, so that had it been presented, in proper time, it could have been allowed by the commissioners?

2. If that be so, whether Chancery has any appropriate jurisdiction in the case?

3. Whether the whole matter is not barred by the omission to present it before the commissioners?

I. In regard to the first point, it seems very clear to me, that during the lifetime of the parties, such a claim, as the present, is local. It is so certainly, by our statute. It seems clearly to be so, at common law. And it seems to be so held, by the New Hampshire courts and so esteemed by the bar there.

II. We think it clear, that by the law of New Hampshire, where the cause of action accrued, and where it was strictly local, it did not survive, but died with the party. At common law, all actions of *tort*, both for and against executors and administrators, died with the person. 9 Petersd. Ab. 342; *Wheatly* v. *Lane*, (1 Saunders, R. 209, n. 1); Bac. Ab. Tit. *Executor* and *Administrator*, P. 2. And as the statute of 4 Edw. III. ch. 7, gave no remedy *against* executors or administrators, for torts, committed *by* the testator or intestate, no action in the English courts can now be maintained, where the proper plea is *not guilty*. This is the rule laid down in the case of *Hambly* v.

Trott, (Cowper's R. 372); and that case seems to have been followed in England, although sometimes doubted in the American Courts. Greenleaf's Cases Overruled, 162. Hence we infer, that an action, like the present, would not survive, either at common law, or by the statute of Edward. The rule, in regard to actions in *favor* of executors, under the statute of Edward, is more favorable, it being the express object of that statute to make it so.

III. By the statute of this state, since the revision in 1839, we suppose such a cause of action, accruing in this state, will survive, against the executor. And as this is the principal administration, all *transitory* causes of action should properly be here presented.

At the time this opinion was delivered, I was inclined to think, that, if this difficulty were the only one in the case, it would not be wholly insurmountable. But upon further reflection, I more incline to believe it is. For unless that is so, we give the claimant an advantage he is not entitled to, by the law of the place where the cause of action accrued, and where it was strictly local, by regarding both the *locality* of the action, and its *demise* with the person, as something pertaining exclusively to the *remedy*. I now think it goes beyond the remedy, and is a fatal infirmity in the cause of action itself. I see no reason why this plaintiff, in presenting his claim before commissioners, should stand any better chance of recovery, than he would against the testator in his lifetime; or why he should be in any better condition, than if the administration were in the *forum*, where the cause of action accrued. I think it safe to affirm, as a general rule, that if the action could not be maintained against the testator, it cannot be against the executor — but not *vice versa*. I think the *demise of the action with the person* may be treated as of the remedy perhaps, and so not effect a mere *transitory* cause of action; but as applicable to a cause of action strictly local, I think it may be otherwise, or at all events, that, the cause of action remaining local, it is, by the decease of the person, effectually gone for all purposes.

In regard to the second general question in the case, it seems to us very clear, that a court of chancery has not any appropriate jurisdiction of cases, like the present It is difficult to say under what department of chancery jurisdiction this case is to be brought.

It is hardly allowable to suppose, that the orator or his counsel expect to succeed upon the ground of fraud. This cause of action does not necessarily depend upon the character of the infirmity in the testator's title to the land. There is no doubt the testator supposed he had good title to the premises; and no doubt that he had good title, by the law of this state, where the testator resided, and with reference to which he acted. But, by the law of New Hampshire, he was guilty of a constructive fraud, in not taking a technical mortgage to secure his debt, instead of an absolute deed, as he did, letting the defeasance rest in parol.

So, also, what the testator did in resisting the claim of this orator, this court have no doubt was done in the most perfect good faith. The conduct of a party, in prosecuting or defending a claim, in a court of justice, can never, I apprehend, be any ground of relief, in a court of equity, upon the ground of fraud or obstinacy.

We think too, that there is nothing of that kind of accident in this case, which will give a court of equity jurisdiction of the matter. All that is urged in argument, as we understand the counsel, is, that the claim was contingent at the time the commission closed, by reason of the pendency of the writ of review. The counsel, learned in the law, in the state of New Hampshire, and they are known to the court to be of the very highest respectability, do not consider, that the writ of review interposed any impediment in the way of the plaintiff's prosecuting his claim for *mesne profits*. And it does not appear to us, that this judgment upon the title to the land was any more contingent, by reason of the pendency of the writ of review, than every judgment is, while it may be so reached by any process, as to defeat its final execution. This may be done in almost any supposable case, by petition for new trial, *audita querela*, writ of error, or injunction from the court of chancery.

We have no doubt, that at common law, the owner of land may, by an entry upon the land, and thus reinvesting himself with the actual seisin, sustain trespass for *mesne profits*, without bringing ejectment at all. It is testified to us, that by the law of New Hampshire, the owner of land may maintain such action, upon the mere force of his title, without an entry even. And there can be no doubt whatever, that upon an entry merely, the plaintiff's claim for mesne profits would have

become perfect, without reference to the judgment. The portion of the argument, which goes to show, that the claim is contingent, applies mainly, and is so treated by the counsel, to the next point in the defence, upon the ground that being contingent at the time the commission closed, by the statute, it would not be required to be allowed, and if not allowed, might still be good against the assets in the hands of the defendant. And that a court of equity is the appropriate tribunal to seek redress in such case.

But to the court it seems impossible to doubt, that this dower, whatever it was, is fully barred, by not being presented before the commissioners. It may indeed be true, that a matter of exclusive chancery jurisdiction, might not be so barred, by not being presented to the commissioners. *Sparhawk* v. *Adm'r of Buel*, (9 Vermont, R. 42.) Perhaps it may be somewhat questionable, whether even this exception be at all necessary. I see not why commissioners of an insolvent estate may not, in the first instance, have jurisdiction of merely equitable claims without objection. To that extent the rule is settled. But beyond that there is no necessity whatever, that a court of equity should entertain jurisdiction, after the commission is closed. If that were to be done, in cases like the present, it must be merely to get rid of the statute bar, which certainly is not allowable. No one can reasonably entertain a doubt, that this suit was instituted, in the court of chancery, because the commission was closed, hoping that that court might devise some means, by which the operation of that bar might be escaped from. But the thing seems to us impossible, short of the utter confusion of all distinctions between the jurisdictions of courts of chancery and common law. The bill was properly dismissed by the chancellor, and his decree is affirmed, with additional costs.

Cause remanded to the court of chancery.

Circuit Court of the United States for the Northern District of New York, at Canandaigua, June Term, 1848.

DARIUS BUCK ET AL. *v.* JOHN C. HERMANCE.

As a general rule, a party cannot be a witness in his own cause.
Nor will he be permitted to avail himself of evidence by indirect means, which would be rejected as incompetent, if offered directly.

In cases of criminal prosecutions for a cheat, perjury, &c., the party aggrieved is a competent witness for the prosecution.

But where he has been used as a witness for the prosecution, the record of conviction is inadmissible in a civil proceeding instituted by him for relief against the fraud.

In an action for the infringement of a patent, within the county of Albany, in the state of New York, brought by parties claiming the exclusive right to the patent in that county: *held*, that a party who was possessed of the exclusive right to the patent in several counties in that state, but who had no interest in the patent in the county of Albany, and no interest in the suit in which he was called, was a competent witness for the plaintiffs.

But a verdict for the plaintiffs could, under no circumstances, be evidence for such witness, in a trial at law or in equity, on the merits of the patent, although it would be admissible on a preliminary motion for an injunction in a suit in equity.

The record of such verdict would be evidence for such witness only where his own deposition would be competent, that is, where the application is to the sound discretion of the court, as on a preliminary motion for an injunction.

THIS was an action on the case to recover damages for an alleged infringement, by the defendant, of the rights of the plaintiffs, under a patent granted to Darius Buck, one of the plaintiffs, for a cooking stove. The plaintiffs claimed the exclusive right to the patent for the county of Albany, in the state of New York, and the declaration averred that the defendant had made and sold, in that county, without license, stoves, which were within the claim of Buck's patent, and infringed upon it. The case was tried by a jury at the June term, 1847, at Canandaigua, before the Hon. Alfred Conkling, district judge, and a verdict rendered for the defendant. On the trial, one Jackson was offered, as a witness, on the part of the plaintiffs. Being examined on his *voir dire*, he testified that he was possessed of the exclusive right to the patent in several counties in the state of New York, and felt a deep interest in sustaining it; that he had employed counsel in a suit in equity between the parties to this suit, for the purpose of obtaining an injunction against the defendant, but that he had no interest in the patent in the county of Albany, or in this suit. On this state of facts, the defendant objecting to the competency of the witness, he was excluded by the court, on the ground of interest. A bill of exceptions was made by the plaintiffs, and on the ground of the exclusion of Jackson, among other grounds, a motion for a new trial was made by them at the October term, 1847, at Albany, before a full bench, Mr. Justice NELSON and Judge CONKLING. The case was held over for advisement till this term.

William H. Seward and *Rodman L. Joice*, for the plaintiffs.
Samuel Stevens, for the defendant.

NELSON, C. J. The objection to the witness Jackson, went upon the assumption that a verdict for the plaintiffs would be evidence in favor of the witness, on a bill filed by him for an infringement of the patent, in the counties in which he is interested, and would afford competent proof of the fact, that its validity had been established by a suit at law, and also that the defendant's stove was an infringement, all which would lay the foundation for an injunction against the defendant, restraining him and all persons claiming under him, from making or vending the article.

On examination, I am satisfied that this view of the question is not well founded. As a general rule, a party cannot be a witness in his own cause, nor will he be permitted to avail himself of evidence, by indirect means, which would be rejected as incompetent if offered directly. The inference, therefore, that would seem to follow, upon the admission of the witness, in this particular case, is, that the verdict could not be evidence in his favor, as it would be virtually permitting the party to testify in his own cause. The argument assumes that the verdict would be evidence, which is against the general principle. Reject the verdict, and there is no objection to the competency of the witness. The question is, which shall be excluded, the verdict, or the witness? I think the former.

In cases of criminal prosecutions for a cheat, perjury, &c., the party aggrieved is a competent witness for the prosecution. Some early cases may indeed be found in which he was excluded as interested, on the ground that the conviction might be used by him, in a proceeding in equity, for relief against the fraud; but it is now fully settled otherwise, the record of conviction being held inadmissible, in the civil proceedings, in all those cases where the party has been used as a witness on behalf of the prosecution. *The King* v. *Boston*, (4 East, 572); *Bartlett* v. *Pickersgill*, (4 East, 577); Peake's Evidence, 45, 46, 153, 154; 1 Phillips's Evidence, 4th Am. ed. 50, 120; *Rex* v. *Hulme*, (7 Car. & Payne, 8); *Maybee* v. *Avery*, (18 Johns. 352.)

The verdict in this case, even if in favor of the plaintiffs, could, under no circumstances, be evidence for the witness on

a trial at law or in equity, for the purpose of establishing his title to the patent, in other words, on a trial upon the merits, as it is a proceeding *inter alios*. It is admissible only on the preliminary motion for an injunction to stay the defendant from infringing pending the litigation, as affording strong evidence of the validity of the patent, and of the title of the complainant — not for the purpose of influencing the final result, but of preserving the rights of the party in the meantime. In this preliminary proceeding, the parties are not tied down to the strict rules of evidence, the object being to enable the court to exercise a sound discretion in granting or refusing the injunction. Hence the depositions of the parties are frequently read on the motion, also the record of any previous trial on the same patent — and in this view, and for this purpose, it may well be, that it is allowable, even though the party had himself been used as a witness. But when thus allowed as evidence, it is apparent that it is not used in the sense of the rule of law which would exclude a party as an interested witness, on the ground that the record of the verdict would be evidence in his favor. It is evidence only in cases where his own deposition would be competent, cases in which the application is to the sound discretion of the court.

For these reasons, I am satisfied that the witness Jackson was improperly rejected, and that a new trial must be granted.

New trial granted.[1]

It is understood that Judge CONKLING, who entertained and expressed doubts at *nisi prius* of the correctness of his decision there, as to the competency of the witness Jackson, fully concurred in the opinion of Judge NELSON.

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[1] In the case of Woodworth *v.* Edwards and others, tried in the circuit court of the United States for the District of Massachusetts, at Boston, in April, 1848, before Mr. Justice WOODBURY, the plaintiff claiming that the defendants, in using Brown's patent planing machine, were infringing on Woodworth's patent planing machine, one Rogers was called as a witness by the defendants. The counsel for the plaintiff objected to the competency of Rogers, because he was a defendant in a suit, wherein the identical machine under consideration in the case on trial, was in litigation, and Judge WOODBURY held that the objection was a good one. If that decision went upon the ground that a verdict for the defendants in the case on trial would be evidence for the witness thereafter, it would seem to conflict with the decision of Judge NELSON.

Miscellaneous Intelligence.

Case of Pattee *v.* Greeley. — The last number of the Reporter contains a report of the case of *Pattee* v. *Greeley*, in which the supreme court of Massachusetts decide that "a bond made upon the Lord's day is void." The same number of the Reporter contains a review of this decision, the reviewer coming to the conclusion that the decision is wrong in principle, and wrong because opposed to the settled law of Massachusetts, as found in the case of *Geer* v. *Putnam*, (10 Mass. R. 312.)

The decision is based upon a statute of Massachusetts, which reads as follows: "No person shall keep open his shop, warehouse, or workhouse, or shall do any manner of labor, business, or work, except only works of necessity and charity, on the Lord's day." In this case, the defendant signed and delivered to the plaintiff a bond on the Lord's day; there being no evidence showing it to be a work of necessity or charity. The doctrine, that no action will lie on a contract made in contravention of a statute, is recognized as law by the court in giving its opinion in this case, and by the reviewer in his review of the decision.

It may be remarked here, lest too great importance be attached to the case of *Geer* v. *Putnam*, that that case occupies but one half page of the volume of Reports, and simply decides, on demurrer, that the plea that the note declared on was made on the Lord's day, is insufficient. Not a single reason is advanced by the learned judge who pronounced the opinion of the court in that case; the statute, upon which the decision in the case of *Pattee* v. *Greeley* is based, is not even referred to; but the sole argument (if argument it may be called) is as follows: "The chief justice recollected a case in this court, sitting in the county of Plymouth, in which this defence was assumed, and that the court, after deliberation, overruled it, and held the contract good."

In the case of *Clap* v. *Smith* (16 Pick. 247,) the court does not pretend to examine the statute, upon which this whole matter hinges, but, taking it for granted that the law of Massachusetts was settled in favor of the validity of Sunday contracts by the decision in *Geer* v. *Putnam*, simply declares, "but if the annexation of the schedule of the property were necessary to complete the sale, we are of opinion, that it was not a void act because done on Sunday." And why? Not a single reason is given for pronouncing this *not a void act*, except that Chief Justice Parsons, in 1813, sustained a general demurrer to a plea in bar that the note declared on was made on the Lord's day, adjudged the plea insufficient, and gave

the plaintiff judgment; and that "the law has ever since been considered and recognized as the law of this commonwealth."

The decision in the case of *Geer* v. *Putnam* was technically right, because the plea does not set forth that the making of said note was neither a work of necessity nor of charity. But to say that the case of *Geer* v. *Putnam* settles the law in favor of the validity of Sunday contracts is the same as to say that the recollection of the chief justice as to the decision of a case in the county of Plymouth, in which the same defence was made, and the contract held good, settles the law in regard to such contracts. It must be admitted by every one, who reads the report of the case of *Geer* v. *Putnam*, that the opinion of the counsel for defendant "that the plea was not to be supported," and the recollection of the chief justice as to the Plymouth case, and, it may be, the more lax notions of that period touching the due observance of the Lord's day, had much to do with the off-hand decision of that case. It is now nearly thirty-six years since Chief Justice Parsons delivered that opinion. A great change has taken place in the public mind in regard to the Sabbath day. It should be matter of gratulation to every good citizen that the supreme court of Massachusetts is now disposed, so far as it has authority, to prevent the profanation of that holy day.

That the decision in the case of *Pattee* v. *Greeley* is right in principle, and in accordance with a correct construction of the statute on which it is based, there can be no doubt. The principle of the statute is found in the fourth commandment: "Thou shalt do no manner of work" on the Sabbath day. The statute, in almost the very words of the commandment, enacts that "no person shall do any manner of labor, business, or work" on the Lord's day. Now, it is admitted that an action will not lie on any contract made in violation of this statute. And the question arises, what is prohibited, under the words, "labor, business or work," by this statute? The court says the making of a bond on the Lord's day is forbidden by this part of the statute. The learned reviewer says the making of a bond is not forbidden, because the signing and delivering a bond is not *labor*, *business* or *work;* that it requires neither bodily nor intellectual exertion to sign and deliver a bond; that it is not *work*, because this signifies *manual labor;* and that it is not *business*, because this term refers to "a complexity of operations," and not to "so simple an act as the signature and delivery of a bond, which would not occupy five minutes of time." To prove all this, he has called to his aid "Webster's Dictionary," and hunted out, with praiseworthy diligence, the various significations of these several words; forgetting all the while that "it is a well understood rule in the construction of statutes that the natural import of the words according to the common use of them, when applied to the subject-matter of the act, is to be considered as expressing the intention of the legislature."

Now every one knows that, in common acceptation, all bodily and mental effort (and effort must be either bodily or mental,) whether limited to a single act or to a "continuity of attention," is denominated *work*, *labor*, *business*. It is very common to hear a lawyer, who has been

closely engaged during the day in the *business* of his office, say, "he has worked very hard all day." Certainly, he does not apply the word *work* to manual labor. The term *business* is applied, in common parlance, to all vocations, whether professional or mechanical, whether intellectual or bodily; and it is equally applicable whether the matter to be done is important or unimportant, and whether the time requisite for its performance is five minutes or five hours. Indeed, it may not be going too far to say that everything, within man's capacity to do, requires a union of intellectual and bodily exertion; and that intellectual employment is so called rather from the predominance of intellectual labor than from the entire absence of bodily exertion. The signing and delivery of a bond involve both intellectual and manual labor; it is business of the most important character; it is work in its highest and truest sense; without which all the study and consultation in the preparation of its terms and forms are as nothing. It is true, it takes a very short time to affix the signature to and deliver a bond, and yet a great deal of time may be spent in determining whether it should be signed and delivered; and all of the time spent in this consideration should be regarded as part of the signing and delivery of the bond.

But *time is not of the essence of this statute.* Like the commandment on which it is founded, it prohibits all labor, business, or work, on the Lord's day. It would, doubtless, be readily admitted by the reviewer, that if a laboring man should delve all day Sunday for his rich employer, (who might suppose he was doing God service by attending church,) he could not recover in an action at law, because the contract was in violation of the statute prohibiting work on the Lord's day: but, according to the doctrine of the review, a contract for a valuable estate executed on the Lord's day, would be valid because the time required in the signing and delivery of it would not exceed five minutes. This doctrine would be making sin to consist, not in the violation of law, but in the great length of time required in the commission of an act. It takes but a moment to plunge a dagger into the bosom of a fellow being and destroy life. It frequently requires a great deal of time to bring about the larceny of a single dollar. The latter is considered but a slight offence; the former a high crime, punishable by death. Why the legislature should prohibit the work of manual labor on the Lord's day, and not that of the intellectual labor, is not readily perceived, unless, as the reviewer supposes, the whole object of the legislature was to prevent such public profanation of this sacred day, as would offend the religious portion of the community. That such was not the whole object of those who passed the law, I think is evident from a consideration of the principle which is at the foundation of the statute. The principle of the statute shows the offence to be against God, and not against man; and therefore every violation of the fourth commandment would be a violation of this statute. It is impossible, however, for man's laws to punish every violation of the statute. In this particular, this statute is like all other statutes. But wherever and whenever courts of justice can reach violations of this law, it is their imperative duty, as ministers of God's law as well as of man's law, to

carry into effect its great principle. The statute was not enacted merely "to preserve public appearances," but to carry out, so far as mere human laws can do so, this great principle of God's law, contained in the fourth commandment.

But, says the reviewer, if the signing and delivery of a bond are prohibited on the Lord's day, it follows that a bond signed and delivered on that day is *ipso facto void*. It is most certainly void. And why should it not be void? *It is made in violation of law*. In some of the states of the Union if money is lent at a greater interest than six per cent. the contract for principle and interest both is *void ipso facto*. And why? Because the contract *is in violation of law*.

It is not always fair to carry out a principle "to its end" in the argument of a question, because it is difficult for finite man to understand the breadth and depth of principle; but in this argument there is no fear in going as far at least as the reviewer, and in maintaining the integrity of the decision of the courts, because it is founded on an immutable law of our Creator. Let us consider the cases put by the reviewer, in which it is supposed the supreme court of Massachusetts would not dare to carry out "to its end" the principle of this decision. Is a Sunday marriage *void* in Massachusetts? There can be, upon principle, but one answer to this question. Marriage is a civil contract, and if not entered into according to law, it must necessarily be void. All contracts made on the Lord's day are prohibited by statute and necessarily void. The consequences resulting therefrom may be in the highest degree ruinous and distressing; but still the law remains the same. The offspring of such a marriage may be declared illegitimate. There may be no estate by the curtesy, no right of dower, no legal heirs. By the laws of several states marriages of whites with negroes or mulattoes are null and void. In many of the states a marriage is not legal unless the banns are published, or a license obtained. Marriages entered into in violation of any of these statutes would be void, and the same disastrous consequences would follow as in the case of a marriage on the Lord's day.

A will executed on Sunday would for similar reasons be void. If "made at a time when such an act cannot legally be done" *it is void because in violation of law*. The "large donations" left by such a will by "a person charitably disposed" had better go to the heirs of the deceased, than "for pious purposes" in profanation of the Lord's day. Courts of justice should not sustain acts done in violation of law upon any grounds whatever, not even for "pious purposes." Nor is there anything strange, after all, in the fact that a will may be set aside because made contrary to law. Every lawyer knows that such things often happen. In Massachusetts, if a will be made with two witnesses only, it is void. In Ohio, if it be made with one witness only, it is void. In all such cases, the law will not carry out the intentions of the testator, because he has, through ignorance or carelessness, or wilfulness, disregarded the requisitions of the law. Why should a different rule be established touching marriages or wills made in violation of law? The man who has so little regard for the law, as to attempt to take to himself a

companion for life, or dispose of his property by his last will, in utter disregard of that law, should not be treated with more than ordinary respect by the ministers of the law.

The very common notion of the dignity of intellectual labor, which seems to press very heavily on the mind of the learned reviewer of this case, is very happily hit off in a beautiful address delivered by the late John Quincy Adams to the bar of Cincinnati.[1] He said he did not consider the profession of the law "in point of dignity, in point of importance, beyond that of the shoemaker, or the tailor, or the housewright, or mason, or any of the mechanical professions." Whether Mr. Adams was right or wrong in his estimate of professional dignity, it is very certain that intellectual labor on the Lord's day is as offensive to God as bodily labor, and for the reason that, as all "manner of work" is forbidden on that day, one is as much a breach of the fourth commandment as the other. It follows, if the commandment forbids intellectual labor, that a statute founded upon it, and framed in almost the same words, forbids it likewise. Works of necessity and charity are expressly allowed to be done on the Lord's day; so that no injury can be done to any one by a prohibition of secular business on that day. Gifts *causa mortis* may still be made on Sunday. Even contracts may be signed and delivered, and wills executed on that day, *in articulo mortis*.

That the supreme court of Massachusetts have, in their decision in this case, adopted such a construction of a statute as the principle upon which it is based demands, should be matter of rejoicing to every friend of the administration of justice.

Cincinnati. W. V. H.

Trial of George Miller. — George Miller, a broker doing business in Boston, was tried at the October term of the municipal court, upon an indictment, founded upon Rev. Stat. cap. 127, § 2, for uttering, as true, certain forged promissory notes, knowing them to be forged, and with an intent to defraud. The case excited considerable interest, from the character and amount of the alleged forgeries, and from the well-known position and standing of the parties. The evidence also of the experts who were examined in the case, is worth preserving. Promissory notes, to the amount of $81,000, purporting to be signed by S. F. Belknap, and payable to George Miller or order, were shown to the jury. It was admitted, that on the 6th July, 1847, Belknap, upon Miller's solicitation, gave to Miller two notes, — one for $3,000, and one for $2,000, — both payable in six months; and on the 30th of the same month, two other notes of $2,500 each, — one on four months, and the other on six months. And these four notes, to the amount of $10,000, were all that were given by Belknap to Miller in the months of July and August, 1847.

The notes, to the amount of $81,000, were as follows: Five notes for $2,000 each, and seven notes for $3,000 each, all bearing date of July 6th, 1847; ten notes for $2,500 each, payable in four months; and ten

[1] See Western Law Journal, vol. i. p. 146.

other notes for $2,500, each payable in six months, — all bearing date July 30th, 1847. To all the notes there were but two dates: July 6th, and July 30th; and to all but two times of payment, — four and six months. All the twelve notes of July 6th, and ten of the notes of July 30th, were payable in six months; and the other ten notes of July 30th were payable in four months; that is, $25,000 fell due on 3d December, $31,000 on the 9th January, and $25,000 on the 3d February. The body of all these notes was written by Mr. Miller's clerk.

Mr. Belknap testified, that he thought he did not sign any of the thirty-two notes presented to the jury; that he paid one note of $2,500 for four months of the date of July 30th, when it became due, which note he subsequently thought was not genuine, and that he never authorized Miller or any one else to sign his name.

Mr. Belknap's clerk testified, that he kept Belknap's books; that all the notes issued by Belknap were entered in those books, and that only the four notes, to the amount of $10,000, mentioned above, were in his books; that on the 9th August, 1847, he met Miller, and compared a memorandum from his note-book with Miller's memorandums; that Miller said that the two agreed, and that the two notes of July 6th and the two notes of July 30th, were all the notes, except some collateral ones, which he had received from Belknap in the months of July and August.

It was also shown, that Miller had obtained from the bank porters, Belknap's notices in relation to the forged paper, and that he prepaid some of the forged notes. He left Boston a few days before the maturity of the notes due December 3d, and the explosion took place.

The testimony of the experts was as follows:

N. D. Gould. Have taught and executed penmanship the most of my life. For four years last past have been in this city. Have taught penmanship about fifty years. Had a taste for it from my youth. Have examined everything connected with it that I could find, to ascertain what could or could not be done by a pen. Am 67 years old. Have often examined writings with reference to questions of forgery, not so much in this state as in others. Have been foreman of a jury when a question of forgery was tried. (Notes from 1 to 33 were handed the witness.)

Can't say whether I have seen all of these; have seen notes like a great many of them. Saw them in the grand jury room. Was secretary of the grand jury from January 1848 to July 1848.

There are five classes of notes here; that is, five different signatures; the name written in a different manner. There is one class of $2,000 dated July 6, for six months, five in number. Of the second class, $3,000, July 6, six months, there are five. Of the third class, $3,000, same date and time of payment, there are two. The fourth class, $2,500, July 30, four months, are eleven in number. In addition to this class, there is one, $2,500, July 30, on six months; it is No. 4; this matches with the fourth class, which are for four months. The fifth class, $2,500, July 30, six months, are nine in number. Two, that were brought in yesterday, Nos. 32 and 33, I should think I had seen in the grand-jury room. The signatures in the first class match each other exactly; by

matching I mean placing one upon the other. (The witness went to the window, and held the notes over each other in the presence of the jurors and defendant's counsel.) I have just shown the jurors Nos. 9 and 30; all of that class will match as well. This is the only reason for my arranging these in one class. Class 2, answer to one another in the same way. Class 3 match in the same way with one another, and with none others. Class 4, do not have the same appearance to the eye, but they all match each other; there are twelve of them. Class 5, all match.

Think all of these were not written in a usual manner of writing; they were probably by some means traced. Some bear fine marks of tracing, besides the final mark. No 1, I examined with a glass, and it is very perceptible there was a mark made with something before the final mark was made. This mark was over the whole signature; the same of No. 2. Think the same is true of No. 3. Have seen some forty or fifty signatures of Mr. Belknap's. Don't hesitate to say Mr. Belknap did not sign all of the three,—Nos. 1, 2, 3.

It is possible for a man, by continual practice, to write his name twice, so that to the eye it would appear perfectly similar. No man can write his name so that it will match exactly one on top of the other. When they are placed together, the length and breadth and turn of the letters always vary somewhere. When men are in the habit of signing bank bills, where they have a particular circumscribed space to write in, their names will sometimes come pretty near matching. A man who undertakes to counterfeit another's hand, must do it by a slow process, which on strict examination looks stiff and unnatural. Sometimes a name by great practice is so fixed in the eye and imagination, that a man can write it through at once. But if he goes too slow or too fast, he will manifest that he is a better or worse writer than the one he attempted to imitate. A man may write his signature so as to appear often alike. But there is a step beyond which a man cannot go, in this. There are no two handwritings alike, any more than two faces. A man cannot move his hand at will, like a machine.

I will now give my reasons for saying that no man wrote these signatures in the usual manner. In the first place, in almost every one of each class the distance from the first letter to the edge of the paper on the right hand, is exactly the same. From the last mark in the letter *p* to the edge of the paper on the right hand, the distance is the same. This is so in almost every one. Every mark included between those two marks are all materially alike in each class. I mention the first mark because no man can strike the pen in the same place, in beginning to write his name. He wont — he don't. If he could do that, he could'nt make all the other marks alike, in length, breadth, and every turn, and then close them all at the same distance from the end. The letter '*p*' Mr. Belknap makes differently from common folks. It is made sideways, with a heavy stroke. In the *p*'s there is some variance, but very slight in the notes. I think it is impossible for a man to write his name four or five times exactly alike.

Cross-Examined. My attention has been particularly turned to this

matter, and first in the grand jury room. Made the memorandum from which I read last night, from minutes taken previously. (The witness here examined No. 1, 2, 3, with a glass, at the window, in the presence of defendant's counsel.) There appears to be a fine mark on all these three, besides the final mark. (The glass was borrowed at an optician's.) Some of the signatures of the 30 others appear to have been written without previous tracing with any other instrument. They must have been traced. They were not written off hand.

George G. Smith. Reside here; am an engraver; have been so 37 years; have often examined handwriting in reference to the question of forgery. (The 33 notes were handed the witness.) Have seen most of them before; of some am sure. They have been divided in five classes; have not examined them particularly. No. 1, 2, 3, I have examined carefully under magnifying glasses. I think they are not genuine signatures. My reasons for thinking them not genuine, are, first, the signatures all match each other, very nearly with absolute perfection. The dots between the letters not only correspond exactly in place, but in form. A tremulousness is manifested under the magnifyer, which shows the signatures were written slowly, not as a man would naturally write his name. They all betray the marks of two lines, indicating either a tracing over a fine mark, or a filling up the marks first made. (The witness examined No. 1, 2, 3 with his magnifyer, and showed the jury the peculiarities in those signatures.) Have given the other 30 notes only a cursory examination. But I think they must have all been forged but one; don't recollect the number of that one. I think them forged on account of the impossibility of any man's writing his name twice so nearly alike. A man does not naturally write his name exactly alike. Never saw a man who could write his name twice so as to stand the test of the magnifyer. Have seen Mr. Belknap's signature. Comparing these signatures with Nos. 1, 2, and 3, should say these notes were not the signature of Belknap. There is a marked peculiarity in the *p*. The line connecting the stem of the *p* with the last part of it, does not seem to be joined to the stem in Nos. 1, 2, and 3. In the genuine signatures of Belknap, these marks are connected. (The witness examined the signatures to the bonds mentioned above, with his magnifyer.) Have examined nine of these. The signatures don't agree at all. In every instance the *p* has been made without taking the pen from the paper.

Cross-Examined. Have examined all the 33 notes. First examined No. 1, 2, 3, in Mr. Bartlett's office Saturday last. Night before last I re-examined them.

On the part of the defence it was shown that, for some years, Miller had been in the habit of transacting business for Belknap, and that his office was Belknap's stopping place when in the city. There was an attempt to show that all the notes which Belknap gave Miller, were not entered in Belknap's note-book, by producing a receipt in the hand-writing of Belknap's clerk, in which it appeared that on the 8th of December, 1846, a note for $2000, on six months, had been given by Belknap to Miller, while the clerk, in his testimony, had sworn that no such note had been given. But it was shown, by referring to the books, that the receipt

had been mutilated, and that over the part torn off, this $2000 note was marked returned. It was attempted to be proved, but unsuccessfully, that Belknap signed these notes, or some notes about that time.

Wells, C J., in summing up to the jury, ruled that, To constitute the crime for which the defendant is indicted, five points must be established. 1st. That the defendant had in his possession notes corresponding to those described in the indictment. 2d. That, having them in his possession, he uttered them as true. 3d. That these notes were counterfeit. 4th. That the defendant knew them to be counterfeit. 5th. That he intended to defraud.

It is admitted that the defendant had in his possession the three notes described in the indictment, and that he uttered them as true. If they were counterfeit, the defendant admits he knew them to be such, and intended to defraud. The only point for you to decide is, are these notes forgeries? The government must prove that Belknap did not sign his name to those notes. Of this fact you must be satisfied beyond a reasonable doubt. The memory of witnesses is very apt to be imperfect in regard to dates and sums; and their recollection of events is very liable to be influenced by conversation with persons who have an interest in those events. But when their evidence is clear, you are to act upon it, uninfluenced by friendship, or any unwillingness to convict any one of crime. It is difficult to explain what is conviction beyond a reasonable doubt, but we may say it is such a conviction as would induce you to hazard upon it your dearest rights.

An important duty of the jury is to reconcile conflicting testimony. Upon examination, what appears conflicting, may often be reconciled. You are to exercise your common sense in this matter, and to suppose that witnesses are mistaken, rather than corrupt. But when the testimony is irreconcilable, you may judge much from the appearance of witnesses, — from the intrinsic credibility of the testimony, and from the surrounding circumstances, whether corroborative or otherwise. Witnesses are rather to be weighed than numbered. All your inquiries, in this case, are to be, do any of the notes, No. 1, 2, 3, correspond with any of the counts in the indictment? If any one of them so correspond, you are to convict the defendant accordingly; if no one of them so correspond, you are to acquit him.

The jury brought in a verdict of guilty. Exceptions were taken to the ruling of the court.

Judges in Maine and Wisconsin. — The Hon. Ether Shepley, of Portland, justice of the supreme court, has been appointed chief justice of that court, in place of Hon. Ezekiel Whitman; and John Howard, Esq. of Portland, has been appointed to fill the vacancy occasioned by the promotion of Judge Shepley.

In Wisconsin, the judges of the circuit courts, who are also judges of the supreme court, are Hon. A. W. Stow, of the 4th district, chief justice; E. V. Whiton, of the 1st district; Levi Hubbell, of the 2d; C. H. Larrabee, of the 3d; and M. M. Jackson, of the 5th, justices. J. Ripley Brigham, of Madison, is clerk of the supreme court.

Obituary Notices.

In Boston, October 14, Hon. Jeremiah Mason, aged 81.

At a meeting of the bar of the county of Suffolk, on Tuesday morning, October 17, in the Law Library, the Hon. Richard Fletcher was appointed chairman, and Mr. George T. Curtis, secretary.

The chairman having stated that the meeting had been called to take some notice of the decease of the Hon. Jeremiah Mason, Mr. Choate rose and spoke nearly as follows:

I have supposed, sir, as you have done, that it would be the desire of the bar of Suffolk, to mark the event which has led to the call of this meeting, by something more than the accustomed and formal expression of sensibility and regret for the loss of one of its number.

Mr. Mason was so extraordinary a person; his powers of mind were not only so vast, but so peculiar; his character and influences were so weighty as well as good; he filled for so many years so conspicuous a place in the profession of the law, in public life, and in intercourse with those who gave immediate direction to public affairs, that it appears most fit, if it were practicable, that we should attempt to record, somewhat permanently and completely, our appreciation of him, and to convey it to others, who knew him less perfectly and less recently than ourselves. It seems to me, that one of the very few greatest men, whom this country has produced; a statesman among the foremost in a senate, of which King and Giles, in the fulness of their strength and fame, were members; a jurist who would have filled the seat of Marshall as Marshall filled it; of whom it may be said, that without ever holding judicial station, he was the author and finisher of the jurisprudence of a state; one whose intellect, wisdom, and uprightness, gave him a control over the opinions of all the circles in which he lived and acted, of which we shall scarcely see another example, and for which this generation and the country are the better to-day: — such seems to me to have been the man who has just gone down to a timely grave. I rejoice to know that the eighty-first year of his life found his marvellous faculties wholly unimpaired.

"No pale gradations quenched that ray."

Down to the hour when the apoplectic shock, his first sickness, struck him, as it might seem, in a moment, from among the living, he was ever his great and former self.

He is dead, and although here and there, a kindred mind, here and there, rarer still, a coeval mind, survives, he has left no one, beyond his immediate blood and race, who in the least degree resembles him.

Under the influence of these opinions and wishes, the resolutions which I hold in my hand have been prepared, chiefly by others, and I have been requested to offer them to the acceptance of the bar.

Mr. Choate then moved the following resolutions, which were unanimously adopted: —

Resolved, That the members of this bar have heard with profound emotion of the decease of the Honorable Jeremiah Mason, one of the most eminent and distinguished of the great men who have ever adorned this profession; and as well in discharge of a public duty, as in obedience to the dictates of our private feelings, we think it proper to mark this occasion by some attempt to record our estimate of his pre-eminent abilities and high character.

Resolved, That the public character and services of Mr. Mason demand prominent commemoration; that throughout his long life, whether as a private person or in public place, he maintained a wide and various intercourse with public men, and cherished a constant and deep interest in public affairs, and by his vast practical wisdom and sagacity, the fruit of extraordinary intellectual endowments, matured thought and profound observation, and by the soundness of his opinions and the comprehensiveness and elevated tone of his politics, he exerted at all times a great and most salutary influence upon the sentiments and policy of the community and the country; and that as a senator in the congress of the United States during a period of many years, and in a crisis of affairs which demanded the wisdom of the wisest and the civil virtues of the best, he was distinguished among the most eminent men of his country for ability in debate, for attention to all the duties of his great trust, for moderation, for prudence, for fidelity to the obligations of that party connection to which he was attached, for fidelity still more conspicuous and still more admirable to the higher obligations of a thoughtful and enlarged patriotism.

Resolved, That it was the privilege of Mr. Mason to come to the bar when the jurisprudence of New England was yet in its infancy; that he brought to its cultivation great general ability, and a practical sagacity, logical power and patient research — constituting altogether, a legal genius, rarely if ever surpassed; that it was greatly through his influence that the growing wants of a prosperous state were met and satisfied by a system of common law at once flexible and certain, deduced by the highest human wisdom from the actual wants of the community, logically correct, and practically useful, that in the fact that the state of New Hampshire now possesses such a system of law, whose gladsome light has shone on other states, is seen both the product and the monument of his labors, less conspicuous, but not less real, than if embodied in codes and institutes bearing his name; — yet, that bred as he was to the common law, his great powers, opened and liberalized by its study and practice, enabled him to grasp readily and wield with entire ease, those systems of equity applicable to the transactions of the land or the sea, which in recent times, have so much meliorated and improved the administration of justice in our country.

Resolved, That as respects his practice as a counsellor and advocate at this bar, we would record our sense of his integrity, prudence, fidelity, depth of learning, knowledge of men and affairs, and great powers of persuading kindred minds; and we know well, that when *he* died, there was extinguished one of the few great lights of the old common law.

Resolved, That Mr. Webster be requested to present these resolutions to the supreme judicial court, at its next term in Boston; and the district attorney of the United States be requested to present them to the circuit court of the United States now in session.

Resolved, That the secretary communicate to the family of Mr. Mason, a copy of these resolutions, together with the respectful sympathy of the bar.

Died, October 28th, in Boston, Hon. Harrison Gray Otis, in the 84th year of his age. We take from the Daily Advertiser the following just tribute to his memory: "Mr. Otis had, for the last twenty years, lived retired from public occupations, after having filled successively during the greater part of the previous thirty years, with distinguished success, the principal prominent and responsible political offices in the gift of the people of the State. He was the son of Samuel A. Otis, Esq., the first Secretary of the Senate of the United States, under successive administrations, for the period of twenty-five years. He was graduated at the University in Cambridge, in 1783, and became early a successful practitioner at the bar. From the time he entered public life, his brilliant talents, his extensive acquirements, particularly in legal and political knowledge, his impressive and graceful style of oratory, and the uniform consistency of his principles, gave him an influence in the political counsels of the state, which few men have enjoyed. He was an efficient coadjutor with such men as Ames, Lowell, Parsons, Cabot, and Gore. He was chosen representative in congress for the Suffolk district in 1797, as the successor of Fisher Ames, which

station he held during the whole of the administration of John Adams. For many years he was an active and efficient member of one or other branch of the state legislature, was speaker of the house of representatives, and for six years president of the senate. In 1817, he was chosen senator in congress, which station he held for five years. He also, at different periods, held the offices of judge of the Boston court of common pleas, and mayor of the city. These important stations he filled with distinguished ability, and with the utmost fidelity to the public interests. In 1823, after the long administration of Gov. Brooks, he was the Federal candidate for Governor of the Commonwealth, but the strong rally of the democratic party, in that year, brought into office Gov. Eustis, in opposition to him. During the most animated contests between the Federal and Democratic parties, he took an active part; and no man in the commonwealth enjoyed a greater popularity, or in a higher degree the confidence of his political friends, or was able to move by his eloquence a popular assembly more powerfully. He had few equals in the amenity of his manners, or the grace, vivacity and interest of his conversation on almost all subjects. He retained the vigor of his intellect in a remarkable degree to the end of his long term of life, which has closed in the full maturity of advanced age, as full of honors as of years."

Insolvents in Massachusetts.

Name of Insolvent.	Residence.	Commencement of Proceedings.	Name of Master or Judge.
Alexander, Amos,	Northfield,	'47, Jan. 4,	George Grennell.
Allen, Daniel S.	Greenfield,	'46, Apr. 22,	George Grennell.
Allen, Phineas,	Northfield,	'47, Mar. 1,	George Grennell.
Amory, Jonathan,	Roxbury,	'48, Sept. 11,	Francis Hilliard.
Brackett, William F.	Lynn,	Sept. 6,	John G. King.
Buckley, William,	Cambridge,	Oct. 2,	Asa F. Lawrence.
Butt, Edward J.	Pittsfield,	Sept. 5,	Thomas Robinson.
Colburn, Aaron,	Stoughton,	" 23,	Francis Hilliard.
Creagh, John,	Gill,	'47, Jan. 26,	George Grennell.
Davis, Grandison,	New Bedford,	'48, Sept. 23,	David Perkins.
Edwards, Rod. C.	Worcester,	" 4,	Henry Chapin.
Elliott, Hiram F.	Boston,	Oct. 27,	J. M. Williams.
Fargo, Horace R.	Oxford,	Sept. 29,	Henry Chapin.
Fogg, Nathaniel,	Boston,	Oct. 9,	J. M Williams.
Goodwin, John, 2d.	Marblehead,	Sept. 30,	John G. King.
Guild, Albert,	Boston,	Oct. 2,	J. M. Williams.
Hancock, Francis B.	Springfield,	Sept. 16,	George B. Morris.
Hastings, Ozias L.	Northampton,	" 26,	Myron Lawrence.
Higgins, George,	Boston,	" 5,	J. M. Williams.
Hunt, Zephaniah,	Springfield,	" 13,	George B. Morris.
Johnson, Benjamin F.	Tyringham,	" 3,	Thomas Robinson.
Littlefield, James M.	Somerville,	Oct. 23,	Asa F. Lawrence.
Mayo, Amory,	Warwick,	May 27,	George Grennell.
Menard, Sidney,	Boston,	Oct. 24,	J. M. Williams.
Mitchell, Elijah.	Greenfield,	June 1,	George Grennell.
Mitchell, James B.	Boston,	Sept. 27,	J. M. Williams.
Muzzy, Charles O.	Boston,	Oct. 27,	J. M. Williams.
Reed, Charles M. et al.	Boston,	" 27,	J. M. Williams.
Shepperd, Calvin,	Ashland,	" 13,	Asa F. Lawrence.
Slater, P. R.	Boston,	" 27,	J. M. Williams.
Smith, Edwin,	Waltham,	" 2,	Asa F. Lawrence.
Southworth, William E.	Northboro',	Sept. 23,	Henry Chapin.
Stearns, Alonzo L.	Chicopee,	" 18,	George B. Morris.
Stockman, John,	Lawrence,	" 6,	John G. King.
Stone, Henry W.	Boston,	Oct. 24,	J. M. Williams.
Taylor, Albert H.	Boston,	" 21,	J. M. Williams.
Tileston, William M. et al.	Boston,	" 27,	J. M. Williams.